

BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes

November 19, 2009

A meeting of the Board of Environmental Protection was held on Thursday, November 19, 2009 at the Holiday Inn / Ground Round, Augusta, Maine. Susan M. Lessard, Chair, called the meeting to order at 09:00 a.m. with the following individuals present:

Board: Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, P. Andrews Nixon, Sue Lessard, Matt Scott, Lissa Widoff, Frank Woodard, and Nancy Ziegler

Absent: Don Guimond. Board member P. Andrews Nixon departed at approximately 2:30 p.m.

Staff: Carole Cifrino, Bureau of Remediation and Waste Management
Deborah Avalone-King, Bureau of Air Quality
John James, Bureau of Remediation and Waste Management
Carla Hopkins, Bureau of Remediation and Waste Management
Jay Duncan, Bureau of Remediation and Waste Management

Others: David P. Littell, Commissioner
Jan McClintock, Assistant Attorney General (morning session)
Nancy Macirowski, Assistant Attorney General (afternoon session)
Cindy Bertocci, BEP Executive Analyst
Terry Hanson, BEP Administrative Assistant

(Meeting adjourned at approximately 4:30 p.m.)

I. DEPARTMENTAL**A. COMMISSIONER'S COMMENTS:**

Staff: The Commissioner highlighted some recent correspondence about quality work by staff; specifically, Molly Zogby and Sean Dougherty for removal of an underground storage tank in Sidney. Additionally, a letter from Frenchie Guevremont thanking the DEP for its work to help establish a joint environmental training center which helps provide training for Publicly Owned Treatment Works (POTW) plant operators. Lastly, the Commissioner noted receipt of a letter from the University of Maine School of Law recommending an individual for a possible internship with either the Department or the Board.

Off-shore Wind Power: Commissioner Littell explained that he attended a recent meeting discussing off-shore wind power at which there was a presentation related to financing wind energy. The financial model looked at converting houses and cars to electricity. If one assumed an 8% (per year) increase in the price of petroleum and gas, conversion to electricity from off-shore wind could save homeowners money. This raises the issue of whether the state should consider financing such conversion.

Stormwater Control – Long Creek Watershed: The Department issued a general permit for stormwater control in the Long Creek watershed; Long Creek is an urban impaired stream and does not meet water quality standards because the area has been highly developed. The Department is committed to controlling stormwater in this watershed so that Long Creek will meet its designated use; this is a real challenge. As a result the Department will require stormwater permits for all non-point source discharges under the Clean Water Act's residual designation provision. This means that if point sources have already been controlled but the waterbody is still in non-attainment due to stormwater discharges, the state can require existing sources to obtain a stormwater permit. All entities with 1 acre or more impervious area may opt into the general permit issued by the Department, or they may get an individual permit. The Department will propose amendments to Chapter 521 to address the requirements for an individual permit. This is only the second time nationally that the residual designation provision has been used. The first is on the Charles River in Boston, but in a more limited fashion. The Department's approach for addressing improvements to this entire watershed includes community, business, and municipal involvement. The state has dedicated approximately 2 million dollars of federal stimulus funds, plus 1.6 million from the Maine Dept. of Transportation's share of federal stimulus funds.

Board member Elizabeth Ehrenfeld asked if this initiative included regulating runoff from existing parking lots.

Commissioner Littell indicated that existing impervious area that is one acre or larger (parking lot and building) would require a permit. The plan will also require a municipal mechanism for treatment of stormwater for entities with insufficient land to address runoff from their property.

Maine Reliability Power Program: Commissioner Littell provided follow-up to a question asked at the last meeting related to the PUC staff report questioning the need for certain portions of the proposed project. The applicant has not modified the project and the Department has not been asked to change the scope its review of the application.

- B. COMMENTS FROM THE BEP CHAIR:** None
- C. EXECUTIVE ANALYST COMMENTS:** None
- D. BOARD CALENDAR:** Reviewed.
- E. DEPARTMENTAL ORDERS/ APPLICATIONS ACCEPTED FOR PROCESSING:** No questions.
- F. EXECUTIVE SESSION:** None

II CONSENT AGENDA ITEMS:

The Board voted (7-0-2-1) on a motion to approve consent agenda item 1, Board minutes July 16, 2009, as presented.

The vote was taken pursuant to 38 M.R.S. §341-D.

Board members Elizabeth Ehrenfeld, Richard Gould, Sue Lessard, P. Andrews Nixon, Matt Scott, Lissa Widoff, and Nancy Ziegler voted to support the motion. Board members M. Wing Goodale and Frank Woodard abstained. Board member Don Guimond was absent.

The Board voted (6-0-3-1) on a motion to approve consent agenda item 2, Board minutes August 6, 2009, as presented.

The vote was taken pursuant to 38 M.R.S. §341-D.

Board members M. Wing Goodale, Richard Gould, Sue Lessard, Matt Scott, Frank Woodard, and Nancy Ziegler voted to support the motion. Board members Elizabeth Ehrenfeld, P. Andrews Nixon, and Lissa Widoff abstained. Board member Don Guimond was absent.

The Board voted (8-0-1-1) on a motion to approve consent agenda item 3, Board minutes August 20, 2009, as presented.

The vote was taken pursuant to 38 M.R.S. §341-D.

Board members Elizabeth Ehrenfeld, Richard Gould, Sue Lessard, P. Andrews Nixon, Matt Scott, Lissa Widoff, Frank Woodard, and Nancy Ziegler voted to support the motion. Board member M. Wing Goodale abstained. Board member Don Guimond was absent.

The Board voted (8-0-1-1) on a motion to approve consent agenda item 4, Board minutes September 3, 2009, as presented.

The vote was taken pursuant to 38 M.R.S. §341-D.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Sue Lessard, P. Andrews Nixon, Matt Scott, Lissa Widoff, and Frank Woodard, voted to support the motion. Board member Nancy Ziegler abstained. Board member Don Guimond was absent.

The Board voted (9-0-0-1) on a motion to approve consent agenda items 5, 6 and 7 as presented.

The vote was taken pursuant to 38 M.R.S. §341-D(6).

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Sue Lessard, P. Andrews Nixon, Matt Scott, Lissa Widoff, Frank Woodard, and Nancy Ziegler voted to support the motion. Board member Don Guimond was absent.

5. DONALD and BRENDA BUTEAU, Harrison – Administrative Consent Agreement (BLWQ - Water)

Note: Board member Nancy Ziegler requested a status report concerning the after-the-fact application.

6. BRIAN MARTIN, Oakland - Administrative Consent Agreement (BLWQ – Land)
7. SB ACQUISITIONS, LLC, Greenwood – Administrative Consent Agreement (BRWM)

III. Regular Agenda

1. CHAPTER 415, REASONABLE COSTS FOR HANDLINE AND RECYCLING OF ELECTRONIC WASTES / amendment (post to 30-day written comment period)
Staff: Carole Cifrino, Bureau of Remediation and Waste Management

The Board voted (9-0-0-1) on a motion to post to 30-day written comment amendments to Chapter 415, Reasonable Costs for Handling and Recycling of Electronic Wastes. This rule established requirements and procedures for consolidation and recycling of electronic waste generated by households. The proposed amendments to this regulation clarify definitions and responsibilities, streamline submittal requirements for manufacturers, and include desktop printers and game consoles as products subject to the manufacturer responsibility, and modify financing from percentage of “return share” to percentage of “market share”. The vote established a public comment deadline of January 4, 2010. The vote was taken pursuant to 38 M.R.S. §341-D(1-B), §1610 Electronic Waste and 06-096 CMR Chapter 415.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Sue Lessard, P. Andrews Nixon, Matt Scott, Lissa Widoff, Frank Woodard, and Nancy Ziegler voted to support the motion. Board member Don Guimond was absent.

2. CHAPTER 161, GRAPHIC ARTS – OFFSET LITHOGRAPHY AND LETTERPRESS PRINTING / new (re-open for 30-day written comment period)

Staff: Deborah Avalone-King, Bureau of Air Quality

The Board voted (9-0-0-1) on a motion to post new Chapter 161, Graphic Arts, Offset Lithography and Letterpress Printing rules to a 30-day written public comment period to provide for comment on proposed changes to the draft rule. This regulation would update state rules regarding Reasonably Available Control Technology (RACT) on major sources of Volatile Organic Compounds (VOC) by restricting VOC emissions from offset lithography and letterpress printing operations. Comments received from the public hearing / public comment period resulted in modifications to the proposed rule which include a requirement that the heat probe for used in the stack test to be

warmed to a temperature that prevents condensation, and a provision that allows for a shorter temperature averaging period for catalytic oxidizers. The vote established a public comment deadline of January 4, 2010. The vote was taken pursuant to 38 M.R.S. §341-D(1-B) and §585-A, and Section 184 of the 1990 Clean Air Act Amendments.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Sue Lessard, P. Andrews Nixon, Matt Scott, Lissa Widoff, Frank Woodard, and Nancy Ziegler voted to support the motion. Board member Don Guimond was absent.

3. UNITED STATES SURGICAL CORP. - MALLINCKRODT LLC // HOLTRACHEM site (Appeal of Tenth Procedural Order)

Staff: Cynthia S. Bertocci, BEP Executive Analyst

The Board voted (7-0-2-1) on a motion to deny the appeal submitted by United States Surgical Corp / Mallinckrodt LLC concerning the ruling in the Tenth Procedural Order which strikes the testimony of Mr. Michael Thomas in its entirety and portions of the testimony of Mr. John DeVillars. The vote affirmed the Tenth Procedural Order. The vote was taken pursuant to 38 M.R.S. §§1361 to 1371 and the Maine Administrative Procedure Act.

Board members Elizabeth Ehrenfeld, Richard Gould, Sue Lessard, P. Andrews Nixon, Lissa Widoff, Frank Woodard, and Nancy Ziegler voted to support the motion. Board members M. Wing Goodale recused, and Matt Scott abstained. Board member Don Guimond was absent.

4. UNITED STATES SURGICAL CORP. - MALLINCKRODT LLC // HOLTRACHEM site (project orientation)

Staff: Cynthia S. Bertocci, BEP Executive Analyst

Board reconvened at approximately 1:30p.m. to consider the remainder of the agenda

5. CHAPTER 880, REGULATION OF CHEMICAL USE IN CHILDREN'S PRODUCTS / new (briefing and post to public hearing)

and

CHAPTER 881, FEES; CHEMICAL USE IN CHILDREN'S PRODUCTS / new (briefing and post to public hearing)

Staff: John James, Bureau of Remediation and Waste Management

The Board voted (9-0-0-1) on a motion to post to public hearing new Chapter 880 Regulation of Chemical Use in Children's Products (which included amendments documented on an errata sheet and an amendment to remove the hyphen in the words "bio-accumulate"; and "eco-toxicity") and Chapter 881, Fees; Chemical Use in Children's Products as presented. Chapter 880 would establish a process for the Board to designate and review "priority chemicals". Designation of a chemical as a "priority chemical" would facilitate the gathering of information on 1) the extent to which children may be exposed to the chemical as a result of its use in consumer

products, and 2) the availability of safer alternatives. Chapter 881 would allow the Department to cover some of its review costs through fees paid by product manufacturers. A December 17, 2009, public hearing will be held and the deadline for written comment is January 11, 2010. The vote was taken pursuant to 38 M.R.S. §341-D(1-B), §§1691 through 1699-B and PL 2007, c. 643.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Sue Lessard, P. Andrews Nixon, Matt Scott, Lissa Widoff, Frank Woodard, and Nancy Ziegler voted to support the motion. Board member Don Guimond was absent.

6. BORALEX ASHLAND / MINOR REVISION WOODASH UTILIZATION PROGRAM –
DEP Permit #S-021177-S-G-M (appeal)

Staff: Jay Duncan, Bureau of Remediation and Waste Management

The Board voted (8-0-0-2) on a motion to direct the Department to revise the draft proposed Board order to grant the appeal, vacating Special Condition #3 which requires one time site soil sample for background manganese levels and vacating Special Condition #4 related to a testing requirement for cumulative levels of manganese. The vote was taken pursuant to 38 M.R.S. Sections 341-D(4) and 1301 to 1319-Y, and 06-096 Chapter 2 Rules Concerning the Processing of Applications and other Administrative Matters.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Sue Lessard, Matt Scott, Lissa Widoff, Frank Woodard, and Nancy Ziegler voted to support the motion. Board members Don Guimond and P. Andrews Nixon were absent.

Next Regular Meeting –Thursday, December 3, 2009 – Holiday Inn/Ground Round